United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

Signed

75-7218

B

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PUBLIC SERVICE MUTUAL INSURANCE COMPANY,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant-Appellee

and

DONALD GRUSKOFF,

Defendant-Appellant

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AS APPELLEE

SCOTT P. CRAMPTON,
Assistant Attorney General.

GILBERT E. ANDREWS,
ELMER J. KELSEY,
LIBERO MARINELLI, JR.,
Attorneys,
Tax Division,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:

DAVID G. TRAGER,
United States Attorney.

GEORGE H. WELLER,
Assistant United States Attorney.

2

TABLE OF CONTENTS

CITATIONS

Cases:

Statutes:

Page

Miscellaneous:

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 75-7218

PUBLIC SERVICE MUTUAL INSURANCE COMPANY,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant-Appellee

and

DONALD GRUSKOFF,

Defendant-Appellant

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF THE ISSUE PRESENTED

Whether the District Court clearly erred in finding that the interpleaded fund was not owned by the appellant Gruskoff, but did belong to the taxpayer and was subject to the federal tax lien and levy.

STATEMENT OF THE CASE

This appeal is taken from a judgment of the United States District Court for the Eastern District of New York in an interpleader action brought by Public Service.[1/] The purpose of the action is to determine whether the Government or Donald Gruskoff is entitled to a $50,000 collateral security deposit which was in Public Service's possession when the action was brought.[2/] (R. 6a-8a.) In an opinion, filed on February 6, 1975,[3/] and findings of fact and conclusions of law (R. 60a-63a) unofficially reported at 75-1 U.S.T.C., par. 9446, District Judge Walter Bruchhausen found the Government to be entitled to the fund. In the judgment, entered on March 25, 1975, the court ordered the fund delivered to the Government. (R. 65a-66a.) Mr. Gruskoff filed a timely notice of appeal on April 4, 1975. (R. 5a.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

The facts, as they appear from the record on appeal, may be summarized as follows:

On October 22, 1971, the taxpayer Raymond Daniels, reputedly a major New York City narcotics dealer, was arrested

---

1/ In this brief, the plaintiff Public Service Mutual Insurance Company is referred to as Public Service, the defendant-appellee United States is sometimes referred to as the Government, and the defendant-appellant Donald Gruskoff is sometimes referred to as Mr. Gruskoff or the appellant Gruskoff.

2/ "R." references are to the separately bound record appendix filed by the appellant Gruskoff.

3/ The District Judge's opinion is set forth in Appendix B, infra. The opinion was not included in appellant's appendix.

on charges of sale and possession of dangerous drugs.[4/] (R. 39a-40a., 60a.) On November 17, 1971, Public Service posted a $100,000 bail bond to secure Daniels' release from confinement. (R. 6a, 60a.) Prior to that time, Mr. Gruskoff deposited $50,000 cash with Public Service as indemnification in the event the bond were forfeited. (R. 6a, 60a.) Public Service issued Mr. Gruskoff a collateral security receipt for the amount deposited. (R. 6a, 60a.)

On October 29, 1971, Daniels' 1971 taxable period was terminated, and a jeopardy assessment of $718,694 was made for his 1971 income taxes. (R. 6a, 62a.) When Daniels failed to pay the assessment following notice of the assessment and demand for payment, tax liens for the assessed amount attached to all property and interests in property belonging to him.

In order to collect the liens, levy was made on Daniels' property in Public Service's possession by notice of levy mailed on April 21, 1972. (R. 13a, 62a.) When it was later learned that Mr. Gruskoff deposited the collateral security for Daniels' bail bond, a second notice of levy was served on Public Service on January 23, 1973, which required delivery of all property held for Mr. Gruskoff as nominee of Daniels. (R. 13a.)

4/ In deposition testimony, Mr. Gruskoff indicated that Daniels is presently serving a prison sentence as a result of conviction on these charges.

At about the time of the second notice, Daniels' bond was terminated, and Mr. Gruskoff demanded return of the collateral security. (R. 37a.) Confronted with the conflicting demands for the $50,000 deposit, Public Service brought this interpleader action to determine which claimant was entitled to the fund. (R. 7a, 17a-18a.)

In the proceedings below, Mr. Gruskoff maintained that the $50,000 originally belonged to his father William Gruskoff, who lent him the money. (R. 26a, 61a.) The only evidence presented in support of this claim was Mr. Gruskoff's testimony. 5/

According to Mr. Gruskoff's testimony, in the early 1960's, he came to owe a favor to Teddy Johnson, a racetrack gambling companion. At that time, Mr. Gruskoff was in debt for gambling losses and unable to make payment. Supposedly, Johnson saved Mr. Gruskoff from the physical harm his creditors might otherwise have inflicted in attempting to collect the debt. When Daniels was arrested, Johnson asked Mr. Gruskoff to make the security deposit for the bail bond. Desiring to discharge the debt of gratitude, Mr. Gruskoff said he would try to raise the required amount. (R. 27a, 40a-42a.)

According to Mr. Gruskoff's testimony, he asked his father to lend him the money because he lacked the funds for the deposit. The father did so with some reluctance, but without requiring a written instrument evidencing the loan. The father's

5/ The father died in November of 1973. (R. 30a.)

decision was induced by assurances that Mr. Gruskoff would receive a fee equal to 10 percent of the security deposit and the money would be returned in a short time. As soon as Mr. Gruskoff obtained the funds, he took them to Public Service. Mr. Gruskoff testified that at that time he did not know whom the bail bond was for or what the charges were against the person he was assisting. He claimed it was only afterwards that he learned the bond was for Daniels and that Daniels was a notorious narcotics dealer. (R. 25a, 29a-30a, 37a-40a.)

According to Mr. Gruskoff, cash was saved from his father's and mother's earnings and was kept in their home. Mr. Gruskoff also testified that during the early 1960's his father received money from sales of two homes. According to Mr. Gruskoff, the cash accumulated from earnings and the sales of the two houses provided his father with the means to lend him $50,000 for the collateral security deposit. (R. 36a-37a.)

The Government's position in this case is that the father never had the financial resources to lend Mr. Gruskoff $50,000 and therefore that the funds had to have come from Daniels. It contends that Daniels used Mr. Gruskoff as a conduit for transmitting the deposit from himself to Public Service so as to shield the funds from tax claims. In the proceedings below, it presented evidence from the records of the Internal Revenue Service and the Social Security Administration establishing that the father was unable to pay a due tax liability in 1956 and since then has not had sufficient income to allow accumulation of $50,000. (R. 54a-59a, 61a-62a.)

Evidence from the Internal Revenue Service showed that in 1956 the father compromised, on the basis of inability to pay, $28,000 of tax liability for $3,500, under an arrangement calling for installment payments of $50 per month. (R. 54a.) As part of the settlement, a collateral agreement provided that during the period of the payments the father would pay additional amounts if his income exceeded $5,000 in any particular year. (R. 55a.) Records pertaining to the collateral agreement established that during the years 1956 through 1962 the father never earned more than $8,500 per year. (R. 55a.) Records of the Social Security Administration showed that the father's earnings during 1963 through 1965 were never greater than $3,000 per year. (R. 58a-59a.) The father's income tax returns for the years 1966 through 1970 proved that for those years his income was below $1,800 per year. (R. 55a.)

After trial without jury, the District Court found that the collateral security deposit belonged to Daniels, and not Mr. Gruskoff or his father. Accordingly, it held that the fund was subject to the Government's levy and ordered it delivered to the Government. In arriving at this result, the District Court did not give any credence to Mr. Gruskoff's testimony that his father had lent him the money for the security deposit. (R. 60a-63a; Opinion, Appendix B, infra.)

SUMMARY OF ARGUMENT

Both Gruskoff and the Government claim a $50,000 fund which Gruskoff deposited with Public Service in November of 1971 as collateral security on a bail bond for the taxpayer. Gruskoff contends he is the owner of the fund, having borrowed the money for the deposit from his father. The Government claims the fund pursuant to a levy made in January of 1973 to collect the taxpayer's unpaid 1971 income taxes. Under Section 6332(a) of Internal Revenue Code, the Government is entitled to the $50,000 unless at the time of the levy it belonged to Gruskoff, rather than the taxpayer. The District Court found that the fund belonged to the taxpayer, and accordingly its judgment ordered delivery to the Government. Since the judgment is required by the finding, it may be reversed only if the finding is clearly erroneous.

The District Court's finding is based on its refusal to give any credence to Gruskoff's testimony, the only evidence backing his claim to the fund. Denying credence to the testimony is supported by Gruskoff's interest in the litigation's outcome, the absence of corroborating evidence, the inherent incredibility of his version of how he came to make the deposit, and the conflict with Government records concerning his father's financial circumstances. Once Gruskoff's testimony is discounted for lack of credibility, the evidence compels the conclusion that the fund came from the taxpayer, a narcotics distributor with 1971 income exceeding $1,000,000. This is true because

the only person the evidence shows with sufficient resources to make the deposit and, at the same time, an interest in the taxpayer's release on bail is the taxpayer. Since there are sufficient grounds for not giving credence to Gruskoff's testimony, and since the District Court's finding logically follows from refusing to believe the testimony, the finding is free of clear error. The judgment must therefore be affirmed.

ARGUMENT

THE DISTRICT COURT CORRECTLY FOUND THAT THE INTERPLEADED FUND DID NOT BELONG TO GRUSKOFF BUT WAS THE PROPERTY OF THE TAXPAYER AND SUBJECT TO THE TAX LEVY

This interpleader action concerns $50,000 which Gruskoff deposited with Public Service in November of 1971 as collateral security on a bail bond for the taxpayer, who had been arrested on narcotics charges. At about the time of the taxpayer's arrest, an assessment was made for his 1971 federal income taxes. When the taxpayer failed to make payment after notice and demand, the Government levied on the taxpayer's property in Public Service's possession by notice of levy mailed in April of 1972. See Internal Revenue Code of 1954, Section 6331(a) and (b), Appendix A, infra. After it was learned that Gruskoff put up the collateral security for the bail bond, a notice of levy was served on Public Service in January, 1973, which more particularly described the property under the levy as that held for Gruskoff as the taxpayer's nominee. Shortly afterwards, Gruskoff demanded return of the collateral security.

Under Section 6332(a) of the Internal Revenue Code, Appendix A, infra, the Government is entitled to the delivery of the $50,000 pursuant to its levy unless the money belonged to someone other than the taxpayer when the levy was made. United States v. Sterling National Bank & T. Co. of N.Y., 494 F. 2d 919, 921 (C.A. 2, 1974); United States v. Manufacturers Trust Co., 198 F. 2d 366, 369 (C.A. 2, 1952).[6/] Concerned that the fund might belong to Gruskoff, Public Service decided not to deliver the fund to the Government, and instead brought this interpleader action to determine which claimant should receive the fund. In the proceedings below, the District Court found that the fund belonged to the taxpayer when it was deposited with Public Service and was therefore subject to the tax levy. Accordingly, the District Court ordered the fund delivered to the Government. In this appeal, Gruskoff contends that the finding of the District Court that the taxpayer was the owner is not sustained by the evidence and that its judgment must therefore be reversed. (Br. 3-6.)

Since the Government is entitled to delivery of the fund pursuant to its levy, except if the fund belonged to Gruskoff, the judgment may be reversed only if the District Court's finding as to the fund's ownership is clearly erroneous. Federal Rules of Civil Procedure, Rule 52(a); Commissioner v. Duberstein, 363 U.S. 278, 289-291 (1960); Montgomery v. Goodyear

6/ See also United States v. Grupposo, 74-2 U.S.T.C., par. 9565 (S.D. N.Y., June 26, 1974); Colorado Milling & Elevator Co. v. Glenn, 118 F. Supp. 943 (W.D. Ky., 1954); Determan v. Jenkins, 111 F. Supp. 604 (N.D. Ga., 1953).

Aircraft Corp., 392 F. 2d 777, 782 (C.A. 2, 1968), cert. denied, 393 U.S. 841 (1968). In large part, the District Court's finding is based on its determination that Gruskoff's testimony, the only evidence presented in support of his claim to the fund, was not deserving of credence. Since the finding is based on a determination of credibility, appellate review of the finding is quite limited, for due regard must be given the District Court's judgment of Gruskoff's credibility. Rule 52(a), supra; M. W. Zack Metal Co. v. S.S. Birmingham City, 311 F. 2d 334, 336-337 (C.A. 2, 1962), cert. denied, 375 U.S. 816 (1963); United States v. Massachusetts Bonding & Insurance Co., 303 F. 2d 823, 827 (C.A. 2, 1962), cert. denied, 371 U.S. 942 (1962), rehearing denied, 372 U.S. 932 (1963).

There is no basis in the record for concluding that the District Court's determination as to Gruskoff's credibility is wrong or that the finding as to taxpayer's ownership of the fund is incorrectly based on that determination. According to Gruskoff's testimony, he deposited the collateral security for the bail bond with Public Service as a favor to a race track gambling companion who years before rescued him from difficulties involving the payment of gambling debts. He testified that he deposited the collateral security without knowing whom the bail bond was for or what the charges were against the person he was assisting. He claimed that he borrowed the money for the deposit from his father[7/], who had

7/ The father died prior to trial.

saved the fund from earnings and the proceeds from the sale of two houses.

A number of factors weigh heavily against giving Gruskoff's testimony any credence and support the District Court's determination that the testimony is undeserving of belief. First of all, Gruskoff is an interested party since he claims the $50,000. Then too, there is the absence of any corroborating evidence, such as a document evidencing the alleged loan or bank records showing deposits by the father approximating the amount of collateral security. The complete absence of even the smallest amount of corroborating evidence has to raise some doubts.

Another source of doubt is the inherent incredibility of Gruskoff's account as to how he came to make the deposit, a point which particularly struck the District Court (Op., Appendix B, infra, pp. 19-20). It is difficult to believe that Gruskoff obtained a loan of the rather large sum of $50,000 to use as bail bond collateral for a person he did not know as a favor to a race track gambling companion whose address he does not know. (R. 40a.) As difficult to believe is that his father lent him $50,000, supposedly the father's life savings (R. 36a), without being told whom the bond was for or what the charges involved were. For all Gruskoff and his father supposedly knew, the taxpayer is the kind of criminal who would not have appeared for trial, and the collateral security could well have been lost. In a word, Gruskoff's account is just not easy to believe.

The thing that really undercuts Gruskoff's story, though, is the evidence from the documents presented at trial which relates to the father's financial circumstances. This evidence established that in 1956 the father compromised, on the basis of inability to pay, a $28,000 federal income tax liability for $3,500, which amount was to be paid in installments of $50 per month. Records pertaining to the payments, Social Security records, and the father's income tax returns proved that since the tax compromise the father's income was not greater than $8,500 per year in the years 1956 through 1962, $3,000 per year in the years 1963 through 1965, and $1,800 per year in the years 1966 through 1970. This evidence established that in 1956 the father was without any substantial liquid assets and since then has not had income sufficient to allow accumulation of $50,000. The father simply did not have the resources to lend Gruskoff $50,000.[8/]

Once having determined that Gruskoff's testimony should not be given any weight for lack of credibility, the only conclusion the District Court could have drawn from the record is that the money for the collateral security came from the taxpayer. The record established that

---

8/ For the father to have compromised the liability on the basis of inability to pay and to have obtained an arrangement allowing installment payments of the compromise amount, he would have had to submit a sworn statement showing that he had no substantial liquid assets with which to pay the liability. Rev. Proc. 55-5, 55-2 Cum. Bull. 902.

the taxpayer's income in 1971 from dealing in narcotics was in excess of $1,000,000.[9/] Obviously, the taxpayer had the resources to make a $50,000 deposit for collateral security on his own bail bond. He also had the greatest stake in having the deposit made, for, unless the deposit was made, it was the taxpayer who would have remained in confinement until trial. There is no evidence, aside from Gruskoff's testimony, to show that anyone else, with the resources sufficient to post the collateral security, was interested in the taxpayer's release from confinement. Thus, once Gruskoff's testimony is discredited, by a process of eliminatior the only source shown by the record from which the funds could have come was the taxpayer.

9/ An income tax assessment of $718,694, which was made in this case, would have to be supported by taxable income in excess of $1,000,000. Internal Revenue Code of 1954, Sec. 1 (26 U.S.C.).

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

SCOTT P. CRAMPTON,
Assistant Attorney General,

GILBERT E. ANDREWS,
ELMER J. KELSEY,
LIBERO MARINELLI, JR.,
Attorneys,
Tax Division,
Department of Justice,
Washington, D. C. 20530.

Of Counsel:

DAVID G. TRAGER,
United States Attorney.

GEORGE H. WELLER,
Assistant United States Attorney.

AUGUST, 1975.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on opposing counsel by mailing four copies thereof on this 14th day of August, 1975, in an envelope, with postage prepaid, properly addressed to him as follows:

Samuel Stone, Esquire
150 Broadway
New York, New York 10038

Gilbert E. Andrews/sek

GILBERT E. ANDREWS,
Attorney.

APPENDIX A

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 6331. LEVY AND DISTRAINT.

(a) Authority of Secretary or Delegate.--If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. * * * If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) [as amended by Sec. 104(a), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125] Seizure and Sale of Property.--The term "levy" as used in this title includes the power of distrant and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

* * *

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) [as amended by Sec. 104(b)(1), Federal Tax Lien Act of 1966, supra] Requirement.--Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

* * *

APPENDIX B [2.]

OPINION Filed February 6, 1975

BRUCHHAUSEN, D. J.

This is an interpleader action, brought by the plaintiff, Public Service Mutual Insurance Company.

The sole question presented is whether the sum of $50,000.00 belongs to the defendant, William Gruskoff, deceased, father of Donald Gruskoff, or is the property of the taxpayer, Ray Daniels.

The answer of the defendant, United States of America, alleges, in substance, that the co-defendant, Donald Gruskoff, is a mere nominee of the taxpayer, Ray Daniels, a/k/a Dutch Schultz, a/k/a John Clark, a/k/a Evans with respect to the $50,000.00 cash which was paid to the plaintiff as collateral security for issuing bail bond No. 90-B-18267, that Gruskoff holds title to said money as a mere nominee of the taxpayer, Daniels, as a means of preventing or avoiding payment to creditors, including the co-defendant, United States of America, for unpaid federal taxes, that on October 29, 1971 an assessment was made by the government for unpaid federal income tax for $718,694.10, which amount was duly demanded, that

the said amount to date remains unpaid, that on the date the assessment was made, this tax liability became a lien in favor of the United States of America against all property of the taxpayer including the funds at issue in this suit, that said notices of tax liens were filed in the Office of the Registers of Kings, Bronx and New York Counties, that on April 21, 1972, a Notice of Levy in the sum of $761,839.75 was served upon the plaintiff, levying upon all property of the taxpayer including the stake being presently held subject to the determination of the rightful owner thereof, that on January 23, 1973, a Notice of Levy in the sum of $718,694.10 was served upon the plaintiff, levying upon all property of Donald Gruskoff, as nominee of the taxpayer, Daniels.

The answer of the co-defendant, Donald Gruskoff, alleges that the said levy and demand do not affect the rights of Gruskoff, that he Gruskoff has made demand upon the stakeholder for the collateral security, and delivered the collateral receipt to the plaintiff, and finally, said collateral is not subject to the assessment dated October 29, 1971.

The trial of this action was conducted on December 3, 1974, and the lone witness called to testify was the co-defendant, Donald Gruskoff. His testimony revealed the following: that during November, 1971 he obtained loan of $50,000.00 in small bills from his father, William, to post as collateral security against a $100,000.00 bond on behalf of the taxpayer, Daniels, who was indicted and charged for narcotic violations, that he, Gruskoff stated during the 1960's he was a heavy gambler and drinker, that a friend of his, Teddy Johnson, a fellow gambler had helped him out of a certain situation and never asked for anything in return, that one day Johnson approached him and related a story that a friend of his was facing state charges on some small matter and asked if he, Gruskoff would be able to post a bond on behalf of Mr. Daniels, that he was promised 10% interest for this favor, and that the security for the bond would be returned in a few months, that the matter was discussed with his father, William, an attorney, who eventually agreed to this agreement, that no written document was ever executed, concerning this agreement with William,

that William died November 10, 1973, that the money or loan belonged to William, that his father accumulated this sum during the years by living frugally and by the sale of two houses, that upon receipt of the alleged loan, it was delivered to the bail bondsman, that Daniels was eventually convicted and jailed, that a reclaim was filed by Gruskoff for return of the security from the plaintiff, that he was eventually informed that the taxpayer was one of the biggest narcotic dealers in the country, and will be sorry and be confronted with many problems, that he knew Teddy Johnson a few years, that they would meet at a bar or at the track, that he, Gruskoff, owed gambling debts and that Johnson interceded on his behalf and told the creditors of Gruskoff not to harm him because he was good for the money and that these lenders were of a shady character. Finally, the United States produced two documents concerning the financial background of William Gruskoff. These documents indicate that the annual income reported by William Gruskoff from the year 1943 through 1970 was extremely limited. Ex. A and B.

The Court has reviewed the testimony and concludes that it is incredible. The witness would have

this Court believe that he, an admitted gambler, and heavy drinker who did not get along with his father, would be able to borrow $50,000.00 in small bills from him, an attorney, of limited means without any written documentary proof, and post it as collateral security for a person he did not know in order to do a casual friend a favor, and in return earn a 10% commission. Furthermore, it developed that the total bond was for $100,000.00. In spite of this knowledge, Mr. Gruskoff expects this Court to believe that he was satisfied that Mr. Daniels was in small trouble, based on a conversation with another gambler, Johnson.

The evidence is clear that this $50,000.00 cash was the property of the taxpayer, Ray Daniels, and that Donald Gruskoff was a mere nominee of the taxpayer.

It is well settled that a federal tax lien arises on the date of assessment. United States v. Vermont, 377 U.S. 351. This tax lien attaches to all property of the taxpayer at the time of the assessment. Glass City Bank v. United States, 326 U.S. 265. Assessments are prima facie evidence of the amount due, and presumptively correct and the burden is upon the taxpayer to prove

them IN-correct. United States v. Lease, 346 F.2d 696. Proof of making said assessment establishes a prima facie case of liability for unpaid taxes. United States v. Mauro, 243 F. Supp. 413.

The plaintiff, stakeholder, seeks costs, disbursements, and counsel fees for bringing this action.

In the case at bar, the impleaded fund is insufficient to satisfy the federal tax lien. Under these circumstances the stakeholder is not entitled to costs or attorneys fees. United States v. Wilson, 333 F.2d 147 and cases cited therein.

The Court concludes that the impleaded fund is not that of William Gruskoff, and clearly is the property of Ray Daniels, to which the United States of America has a lien, and, therefore, entitled to the proceeds.

Findings of fact and conclusions of law to be settled on five (5) days' notice.

Copies hereof are being forwarded to the attorneys for the parties.

Walter R. Mansfield

SENIOR U. S. D. J.